

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555-scc

4 Adv. Case No. 08-01420-scc

5 - - - - - x

6 In the Matter of:

7 LEHMAN BROTHERS HOLDINGS, INC.

8 Debtor.

9 - - - - - x

10 In Re: LEHMAN BROTHERS HOLDINGS INC. ET AL,

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16 U.S. Bankruptcy Court

17 1 Bowling Green

18 New York, New York 10004

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20 May 20, 2015

21 10:02 AM

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23 B E F O R E :

24 HON SHELLEY C. CHAPMAN

25 U.S. BANKRUPTCY JUDGE

Hearing re: Doc #11661 Seventeenth Application of Hughes
Hubbard & Reed, LLP for Allowance of Interim Compensation
for Services Rendered and Reimbursement of Actual and
Necessary Expenses Incurred from August 1, 2014, through
December 31, 2014

Hearing re: Doc #48939, Motion to Allow Disclosure of the
Derivative Questionnaires

Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: How is everyone today? All right.

3 Are we doing the LBI calendar first? All right, please come
4 up.

5 MR. KOBAK: Good morning, your Honor. James
6 Kobak, Hughes, Hubbard & Reed for Mr. Giddens, the super
7 trustee. Your Honor, the only matter on the calendar today
8 is our seventh application for interim fees.

9 THE COURT: Seventeenth.

10 MR. KOBAK: Seventeenth, you're right, your Honor.
11 It's been a long time. There's no opposition to the
12 application and SIPC has filed the statement in support of
13 that, which of course is an idle but considerable reliance,
14 and as you can see, Mr. Caputo is here in court today.

15 This application covers the five-month period from
16 August 1, 2014, through December 31 of that year. It
17 encompasses approximately 25,000 hours in that five-month
18 period, and reflects our standard ten percent public
19 interest discount. It is an interim-fee application, so
20 there's also a holdback of ten percent of the total amount
21 that was billed during that time.

22 We voluntarily adjusted our fees, as reflected in
23 the application, both before and after discussions with
24 SIPC, in the amount of approximately \$380,000. We also
25 wrote off expenses that we customarily would charge to other

1 clients, in the amount of approximately \$85,000. So that
2 would be a public interest discount. It reflects a total
3 discount of approximately \$2.2 million.

4 This period was a very busy period. Among other
5 things, we made the first distribution on general estate
6 claims of 17 percent, as well as 100 percent on secured
7 administrative and priority claims.

8 We also did a lot of the work in preparation for
9 the second interim distribution, the motion for which was
10 filed a couple of weeks after the end of the year. There
11 was very extensive litigation and mediations, which are
12 reflected in the applications. We've also filed, I think,
13 over 30 objections involving over 362 claims, which resulted
14 in a reduction of general estate claims of over \$1.5
15 billion.

16 The other services are more fully described in the
17 application and my supporting affidavit. And we'd ask the
18 court to enter an order approving the application.

19 THE COURT: All right. Thank you very much. I
20 appreciate your summarizing the events that occurred during
21 the fee period. Had you not mentioned it, I too was going
22 to mention the occurrence of the distributions to the
23 general unsecured creditors. Which is something that, as I
24 have said on many occasions, I think nobody anticipated what
25 actually occurred when these cases were filed. So it's a

1 large number. The reductions that have been voluntarily
2 taken are also large numbers. And it's most important to
3 view the number in the context of the achievements of the
4 case and the returns to the creditors, which I think are
5 significant and continue to be positive.

6 And astonishingly, there continues to be a lot of
7 work, yet to be done. In particular, in reliance on SIPC's
8 recommendation, and because there have been no other
9 objections, I will approve the application.

10 MR. KOBAK: Thank you, your Honor.

11 THE COURT: Thank you very much. All right, we're
12 going to move into the LBHI calendar please. Nothing like
13 having a half-full courtroom for an uncontested matter. Am
14 I having anyone to talk to here? Sorry?

15 [MS. HIGHTON?]: Good morning, your Honor. It's
16 Diane [HIGHTON?] from (indiscernible).

17 THE COURT: Oh yes, no I'm sorry. I meant, are
18 there any of the entities who filed a response, which should
19 be heard this morning. No? Okay. All right. Let's get
20 started then.

21 [MS. HIGHTON?]: Okay. As you know, your Honor,
22 we're here on the debtor's motion to admit the disclosure of
23 the derivatives questionnaires, pursuant to Bankruptcy Code
24 107A. I'd just like to make a couple points to set the
25 stage for the hearing. The relief that we're asking for is

1 only as to truly non-objecting parties. We have filed a
2 revised proposed order that does not include anybody who has
3 objected, even well after the deadline that we set.

4 THE COURT: Okay. So let me try to clarify, to
5 make sure that we're on the same page. Coming into this
6 hearing today, I understood that you were carving out --
7 I'll call them truly objecting parties. But there was also
8 a response filed by J.P. Morgan and Credit Suisse. And
9 there was a response filed by Citi. And each of those
10 appear to ask for additional relief or additional clarifying
11 language in the order. So I'm not quite sure where those
12 stand.

13 [MS. HIGHTON?]: Right. They did file a response
14 asking for additional relief. We then filed a reply where
15 we explained those issues aren't properly teed up. Nobody
16 has met and conferred. We haven't even talked about that
17 discovery. You can bring your motion to compel later. They
18 then filed, I believe it was last week, a response to that,
19 basically conceding, as I read it, conceding that point in
20 saying, we just want the ability to be able to move to
21 compel later. So they may be here to mention that, but I
22 think they recognize that it's not actually been teed up on
23 this motion.

24 THE COURT: Okay.

25 [MS. HIGHTON?]: And there may not even be a

1 dispute yet.

2 THE COURT: Okay. Does the order make clear that
3 the derivative questionnaire defined term includes the
4 uploaded materials? Because that appeared to be, not
5 something that the parties disagreed about. Correct?

6 [MS. HIGHTON?]: Right. It's everything that was
7 uploaded to the website.

8 THE COURT: To the website, right. So we're not
9 including subsequent communications, because that's beyond
10 the scope of the relief then, as asked. And we're not
11 including anything in the nature of a directive that
12 everything be produced to everyone. That's for another day.

13 [MS. HIGHTON?]: Exactly, your Honor.

14 THE COURT: Okay, all right. Now someone else is
15 standing up.

16 MR. CLAREMAN: William Clareman from Paul Weiss on
17 behalf of Citibank Entities. So we had filed a statement in
18 support of the original motion.

19 THE COURT: Right.

20 MR. CLAREMAN: And requested that the motion be
21 clarified, so that disclosure would be permitted, not only
22 materials that were in fact uploaded to the website, but any
23 materials by any counterparty that were required to be
24 submitted in connection with the bar date order derivatives
25 questionnaire. Now if I could just explain the basis for

1 that request.

2 THE COURT: What's the difference between that and
3 what we just said?

4 MR. CLAREMAN: The reason for our request was,
5 Citi has been litigating with Lehman for years now, and
6 we've had discovery. And some of that discovery has
7 included derivatives questionnaire responses. Some of what
8 we were provided by way of derivatives questionnaire
9 responses, which were just simply flipped to us by Lehman,
10 were on their face, I would say, manifestly incomplete.
11 They didn't include trade level details, valuation
12 information.

13 THE COURT: Okay. But that's what I just -- but
14 now I'm looking at your response. And at the very end of
15 numbered paragraph 3, you say, the proposed order should
16 clarify that "derivatives questionnaire" includes all
17 information and materials required by the bar date order,
18 whether such material was uploaded initially to the Lehman
19 claim website, or subsequently provided to Lehman in an
20 alternative manner.

21 MR. CLAREMAN: That's correct. And we actually
22 believe that -- so in other words, it wasn't uploaded to the
23 website. It was simply provided on a hard drive. We
24 believe that the amended order, the May 1 order, which
25 authorizes disclosure of derivatives questionnaires and any

1 supporting materials is sufficient. So we did not see a
2 need to file a certifiable response to the amended motion.
3 Because we believe that the amended order addressed any
4 concerns that we have.

5 THE COURT: If no one's confused, that's great,
6 but I'm confused. Because six minutes ago, we agreed that
7 the order was not going to include subsequently provided
8 materials. And you just said, yes, it does. So I need to
9 understand what it is that we're doing here. Because I
10 understand your point, that kind of retroactively something
11 can become part of the derivatives questionnaire. But then
12 I don't know how to draw the line between what was
13 delivered, subsequently, and what then began to be delivered
14 as a result of engagement between Lehman on the one hand,
15 and counterparties on the other hand. So your clarification
16 blends into, I believe, the other request that was made by
17 JPM and Credit Suisse in paragraph 16, which talks about
18 subsequent communications about submissions and
19 clarifications by the counterparties. Which are relevant
20 and supplement the completeness and accuracy of the
21 derivative questionnaire. I'm reading from paragraph 16 of
22 the document filed by the Wachtell firm. So let's hear
23 first from Lehman, what you think is going on.

24 [MS. HIGHTON?]: Okay. So I think you're right,
25 your Honor. The supporting materials that were uploaded --

1 THE COURT: Yes.

2 [MS. HIGHTON?]: As you know, there is an online
3 questionnaire. The questionnaire was filled out. There
4 were supporting materials. That is within the scope. That
5 is what we can delineate. Everybody was on notice.

6 THE COURT: Sure, right. But what's just been
7 said was, somebody then sends it -- I'm making this up.
8 Someone sends an email to Lehman and says, gee, my system
9 crashed, or it looks like my upload didn't work. Can I send
10 you by FedEx the materials? Right? So the request is, we
11 want those materials. And my difficulty is drawing the line
12 between that and the paragraph 16 subsequent communications.

13 [MS. HIGHTON?]: Right. That issue -- can we send
14 it to you by Federal Express, is something we have dealt
15 with extensively over the last year. And where there needed
16 to be additional production of such communications, we've
17 been able to work that out, and give productions.

18 THE COURT: Right. But now we've segued into what
19 you're doing in litigation with Citi, versus what the scope
20 of this order is now. The scope of the authority that
21 you're asking to share, right?

22 [MS. HIGHTON?]: Right. The scope of this order
23 is narrower. It is carefully delineated so that everybody
24 who received notice of our motion, knows exactly what of
25 their stuff is subject to this order. So we can't just

1 throw in subsequent communications now, because that could
2 involve all kinds of things. Putting aside the
3 extraordinary burden associated with actually producing
4 that, nobody is on notice of that, so it's not on the table.

5 THE COURT: Right. So in other words, the answer
6 to Citi's concern, as far as this order goes, is no. Right?

7 [MS. HIGHTON?]: Mm hmm.

8 THE COURT: There's a clear line. Either it was
9 uploaded or it wasn't. If it wasn't uploaded, then it's
10 left to an individual litigation to serve a discovery
11 request and based on all the other rules that are
12 applicable, it will be produced, or it won't be produced.
13 But it seems to me, that if the derivatives questionnaires
14 themselves are produced in the context of a litigation, then
15 it's certainly fair game, subject to applicable privileges,
16 that the rest of the stuff, the FedEx box and everything
17 else, be produced.

18 MR. CLAREMAN: Judge, if I may try one more time
19 to clarify the specific type of information that Citi is
20 requesting. Because I do think there's a distinction
21 (indiscernible).

22 THE COURT: I don't want to deal today with what
23 Citi's requesting. If Citi is requesting something in its
24 litigation, that's to be dealt with in that litigation. I'm
25 trying to clarify what's going to apply across the board,

1 for the relief from the non-disclosure provision of the bar
2 order.

3 MR. CLAREMAN: I understand that. And so the
4 derivatives questionnaire, that all of the parties were
5 required to comply with, required the disclosure of
6 individual trade level details.

7 THE COURT: Yes.

8 MR. CLAREMAN: So just the trade levels and the
9 trade level valuations. And so, it is our view that the
10 relief should be applicable to that information that was
11 provided to the estate. If it happens to be a case, then
12 the party neglected to upload that specific information,
13 trade level details and valuations to the website in error,
14 or because they failed to comply with the bar date order,
15 that group of counterparties should be in a privileged
16 position, by virtue of not having complied with the original
17 bar date order derivatives questionnaire. And so it is an
18 easy line to draw, we believe, to permit the disclosure of
19 the specific information that was called for by the
20 derivatives questionnaire, and any other information that
21 was provided subsequently, that clearly falls within the
22 plan language of what the derivatives questionnaire was
23 required to provide.

24 THE COURT: You say clearly falls within the plan
25 language. You've got thousands of derivative

1 questionnaires. I don't know how many counterparties failed
2 to fully comply. And then it's a question -- why don't I
3 let you respond.

4 [MS. HIGHTON?]: Well also, I mean, that's all
5 true, but it's not just who might have failed to comply.
6 There are a lot of subsequent communications. In some
7 cases, and it's not just ...

8 THE COURT: That's where the plainly and clear
9 language, we run into a problem, because putting to one side
10 your entitlement to -- what you're entitled to in
11 litigation, this is about LBHI having to determine what
12 falls within the clearly, plainly, and what goes over the
13 line into things that came in, once there was engagement on
14 the claim.

15 My point to you is that it doesn't matter. In
16 your litigation, your rights are fully preserved, and you
17 are absolutely entitled to request all of that category of
18 stuff. And subject to the usual rules of privilege, they're
19 not going to be able to rely on the bar order to not
20 produce. If that's the only reason that they're not
21 producing, then I will give them relief from that provision.

22 But right now, it does not seem appropriate to
23 draw a fuzzy line or to remove a clear line between what was
24 uploaded and everything subsequent.

25 [MS. HIGHTON?]: And your Honor, that information

1 wasn't covered by the bar date order. That subsequent
2 communication -- is not even covered by the bar date order.

3 THE COURT: Right, but the important point for
4 this moment right now, is due process. Right? The
5 important point is, what did people think was going to
6 happen today? They were told that you want to produce the
7 derivatives questionnaire. It didn't say, and everything
8 subsequent. So I have a concern that thousands of people
9 got this notice. They decided, I don't care about that.
10 And then maybe they stopped following it. They didn't read
11 all the rest of the papers, and now there's additional
12 relief, that's really beyond the clarification. A
13 clarification is -- it includes the uploads. That's a
14 clarification, because I think the definition of derivatives
15 questionnaire, includes the uploads. But to include things
16 that you should have uploaded, but did not, I think takes it
17 beyond -- I have a due process concern about folks who are
18 not here, not objecting, on the one hand. On the other
19 hand, your rights are fully protected. This doesn't hurt
20 you at all.

21 MS. GROVAK: Your Honor, Molly Grovak from
22 Wachtell Lipton, I'm here on behalf of the J.P. Morgan
23 entities, that were joined by Credit Suisse, and that was
24 our exact concern.

25 THE COURT: So what was your exact concern?

1 MS. GROVAK: Our exact concern is making sure that
2 our rights were protected with respect to discovery.

3 THE COURT: Of course not, of course.

4 MS. GROVAK: So given that, the reason we filed a
5 response to Lehman's reply, was to say that, now that we
6 know and we've made clear, and spoken with the parties, that
7 our rights are protected in terms of discovery, and we can
8 seek these subsequent communications, which we view as very
9 important, we're fine. And we support the order as entered
10 for today.

11 THE COURT: Sure, all of that is preserved for
12 another day. Whether somebody has raised their hand now
13 about it, or in some other litigations.

14 MR. CLAREMAN: Thank you, Your Honor.

15 THE COURT: Okay, thank you.

16 [MS. HIGHTON?]: And one more thing, your Honor,
17 we have negotiated some minor modifications to the proposed
18 order, and so we'll be submitting a new order to you.

19 THE COURT: There was one other point that I
20 didn't quite understand, the retention of jurisdiction
21 point. I think that it was in the Wachtell pleading,
22 paragraph 15, the last decretal paragraph of the proposed
23 order, appears to mandate that this Court retain
24 jurisdiction over any disputes related to the proposed
25 order, vagueness. I mean, I only have the jurisdiction that

1 I have.

2 MS. GROVAK: We are fine with the order that was
3 proposed for today.

4 [MS. HIGHTON?]: I guess we changed the language -
5 - ordered that this court retains jurisdiction to interpret,
6 implement, and enforce the provisions of this order. So we
7 just tightened it up. Everybody seemed okay with that.

8 THE COURT: It seems remarkably close to the other
9 language, but that's fine. If you're okay.

10 MS. GROVAK: We're okay with it.

11 THE COURT: Okay, good.

12 [MS. HIGHTON?]: Yeah, just tightened it up a
13 little.

14 THE COURT: Okay. So is there anything else that
15 we need to talk about, or anyone else who would like to be
16 heard with respect to LBHI's motion to allow disclosure of
17 the derivative questionnaires? Okay. I'm going to approve
18 the order. I'll need to review the revised form because I
19 don't think I've seen it. What's your process for dealing
20 with the objectors?

21 [MS. HIGHTON?]: Your Honor, we've been
22 negotiating with them. First of all, anybody that is a non-
23 objector, that wants to jump into the objector pile today,
24 and continue negotiating with us, is welcome to do that. We
25 really want to make sure that this order being entered is

1 only for non-objectors. But what we've been doing, is
2 trying to work out some kind of a global solution, if
3 possible, along the lines of anonymization, a narrow
4 anonymization of the questionnaires that are really
5 confidential. And there are several objectors, so it's
6 taking us a while to do that. But we're hopeful that we can
7 get this order entered, and then move on, and be able to
8 present you with something that will work for everyone.

9 THE COURT: I'm just going to hang back and let
10 you do all of that. It raises a number of questions, in
11 terms of how that meshes with other litigations, but I'll
12 let those people raise those issues and you solve them
13 before I think more about them.

14 [MS. HIGHTON?]: Okay great. We'll narrow it
15 down.

16 THE COURT: Okay. All right, thank you all very
17 much. Have a lovely day.

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya
Ledanski Hyde

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Date: May 21, 2015

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